

**Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the State Independent Alliance and the)	
Independent Telecommunications Group for a)	
Declaratory Ruling that the Basic Universal)	WT Docket No. 00-239
Service Offering Provided by Western Wireless in)	
Kansas is Subject to Regulation as Local Exchange)	
Service)	
)	
Petition for Reconsideration and Clarification		

ORDER ON RECONSIDERATION

Adopted: June 19, 2007

Released: June 26, 2007

By the Commission:

I. INTRODUCTION

1. In this order, we dismiss as moot the September 3, 2002, petition filed by the State Independent Alliance and the Independent Telecommunications Group (Independents' Petition).¹ The Independents' Petition sought reconsideration and clarification of the Commission's Memorandum Opinion and Order holding that Western Wireless Corporation's (WWC) Basic Universal Service (BUS) offering in Kansas was a Commercial Mobile Radio Service (CMRS) (*BUS Order*).² We also vacate the *BUS Order*, based on evidence that the service that was the subject of the order no longer exists as described in the *BUS Order*.

II. BACKGROUND

2. *BUS Order*. On August 2, 2002, in response to a petition for declaratory ruling filed by Independents,³ the Commission clarified that WWC's BUS offering in Kansas was CMRS. In the *BUS Order*, the Commission explained that WWC's BUS offering was properly classified as CMRS because it met the definition of "mobile" service under the statute and the Commission's rules and because it was

¹ Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service, WT Docket No. 00-239, Petition for Reconsideration and Clarification, filed Sept. 3, 2002 (Independents' Petition).

² Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service, WT Docket No. 00-239, *Memorandum Opinion and Order*, 17 FCC Rcd 14802 (2002) (*BUS Order*). On October 1, 2002, the United States Telecom Association (USTA) filed in the United States Court of Appeals for the District of Columbia Circuit a Petition for Review of the *BUS Order*, pursuant to 47 U.S.C. § 402(a), docketed as No. 02-1301. USTA challenges the finding in the *BUS Order* that BUS in Kansas is not subject to certain state regulations applicable to local exchange carriers because BUS is a CMRS offering. The court is holding the case in abeyance pending the release of this reconsideration order.

³ Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service, WT Docket No. 00-23, filed November 3, 2000.

ancillary, auxiliary, or incidental to WWC's provision of traditional cellular service in Kansas.⁴ The Commission emphasized that its holding was "a narrow one based on the particular facts in the record."⁵ The Commission also clarified that, under section 332(c) of the Act, Kansas could not regulate WWC's BUS rates and entry or impose equal access requirements on BUS, although it could regulate other terms and conditions of BUS.⁶

3. *Independents' Petition.* On September 3, 2002, the State Independent Alliance and the Independent Telecommunications Group filed a Petition for Reconsideration and Clarification of the Commission's *BUS Order*. Specifically, the Independents' Petition sought reconsideration of the conclusions in the *BUS Order* that WWC's BUS offering was a mobile rather than a fixed offering and therefore classified as CMRS; and, in the alternative, that BUS was a CMRS offering because it was ancillary, auxiliary, or incidental to WWC's CMRS offerings in Kansas.⁷ On September 17, 2002, the Commission released a public notice seeking comment on Independents' Petition.⁸ Eight parties filed comments and seven parties filed reply comments.

4. *Current Status of WWC BUS Offering in Kansas.* Since the release of the *BUS Order*, a number of changes have occurred. First, on July 19, 2005, the Commission released an order approving the merger of WWC and Alltel Corporation (Alltel).⁹ As a condition of its approval, the Commission required Alltel to divest certain WWC operating units, including units in the Kansas markets where WWC had offered BUS.¹⁰ On January 31, 2007, Alltel, on behalf of its wholly-owned subsidiary, WWC, filed a letter notifying the Commission that it had completed the sale to United States Cellular Corporation of assets for the six markets in Kansas where WWC had offered BUS.¹¹ Alltel noted that the sale to U.S. Cellular included the wireless network infrastructure used to provide BUS, Western Wireless's BUS customers, and Western Wireless's BUS wireless devices.¹² Thus, Alltel indicated, although it still provides CMRS service in Kansas, following the sale of these assets, it has no BUS customers and does not offer service to BUS wireless devices in Kansas, nor does it own any BUS wireless network

⁴ *BUS Order*, 17 FCC Rcd at 14809, para. 15. BUS was described and marketed by Western Wireless as wireless local loop service or wireless residential service, a substitute for local exchange service designed to compete with traditional wireline local exchange service. *See, Id.* at 14806-07, paras. 8-9.

⁵ *Id.* at 14812, para. 20.

⁶ *Id.* at 14809, para. 15.

⁷ Independents' Petition at 3-10. The Independents' Petition also sought clarification that the Commission did not adopt the finding in the *BUS Order* that BUS is a mobile service because two of the four sitting Commissioners did not support that conclusion. Independents' Petition at 2. In addition, the Independents' Petition sought clarification that it is not inconsistent with federal law for the Kansas Corporation Commission to condition the receipt of Kansas universal service funds on the provision of equal access by eligible telecommunications carriers (ETCs), including CMRS ETCs. Independents' Petition at 11.

⁸ Wireless Telecommunications Bureau Seeks Comment on Petition for Reconsideration and Clarification of Commission Order Regarding Western Wireless's Basic Universal Service Offering in Kansas, WT Docket No. 00-239, *Public Notice*, 17 FCC Rcd 17140 (2002).

⁹ In the Matter of Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations, File nos. 0002016468, *et al.*, *Memorandum Opinion and Order*, 20 FCC Rcd 13053 (2005).

¹⁰ *Id.* at 13112-15, paras. 162-69 (2005).

¹¹ Letter from Michele C. Farquhar, Hogan & Hartson LLP to Marlene Dortch, Secretary, FCC, WT Docket No. 00-239, filed Jan. 31, 2007.

¹² *Id.* at 1-2.

infrastructure or BUS wireless devices in the state.¹³

III. DISCUSSION

5. In view of the changes that have occurred with respect to the WWC BUS offering, we find that it is appropriate to vacate the *BUS Order* and dismiss the Independents' Petition as moot. As noted in the *BUS Order*, the Commission generally determines the regulatory status of a particular wireless service on a case-by-case basis based on the specific facts at issue.¹⁴ As indicated above, WWC has been merged into Alltel, and it no longer offers or provides BUS service in Kansas. Nor does it own any BUS wireless network infrastructure or BUS wireless devices in the state. As a result, the WWC Kansas BUS offering that the Commission considered in its *BUS Order* no longer exists. Because the Commission's holdings in the *BUS Order* were fact-specific and the essential facts that the Commission relied on no longer exist,¹⁵ we conclude that the findings in the *BUS Order* are rendered moot. Accordingly, we vacate the *BUS Order*. For the same reason, we dismiss as moot the Independents' Petition.

IV. ORDERING CLAUSES

6. IT IS THEREFORE ORDERED that pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the August 2, 2002, Memorandum Opinion and Order in the above captioned proceeding regarding WWC's BUS service is VACATED.

7. IT IS FURTHER ORDERED that pursuant to sections 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration and Clarification filed on September 3, 2002 by the State Independent Alliance and Independent Telecommunications Group regarding WWC's BUS service is DISMISSED.

8. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 USC Sections 154(i), 302, 303(e), 303(f), 303(r) and 307, this proceeding in WT-Docket No. 00-239 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³ *Id.* at 2.

¹⁴ See, *BUS Order*, 17 FCC Rcd at 14812, para. 20; Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Service, WT Docket No. 96-6, *Second Report and Order and Order on Reconsideration*, 15 FCC Rcd 14680, 14683, para. 7, 14687, para. 15 (2000); and Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411 (1994).

¹⁵ See, e.g., *BUS Order*, 17 FCC Rcd at 14811-14, paras. 17-22 (discussing the size and technical capabilities of the WWC BUS units); 14817-18, paras. 26-29 (citing evidence from WWC showing that the WWC's BUS offering is incidental to WWC's principal cellular service).